

HOLLSTEIN KEATING CATTELL JOHNSON & GOLDSTEIN P.C.

BY: Stuart M. Goldstein

WILLOW RIDGE EXECUTIVE OFFICE PARK

750 ROUTE 73 SOUTH – SUITE 301

MARLTON, NJ 08053

(856) 810-8860

ATTORNEY FOR **Third-Party Defendant, Garfield Molding Co. Inc.**

NEW JERSEY DEPARTMENT OF
ENVIORNMENTAL PROTECTION, THE
COMMISSIONER OF THE NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, and THE ADMINISTRATOR OF
THE NEW JERSEY SPILL COMPENSATION
FUND,

Plaintiffs

v.

OCCIDENTAL CHEMICAL CORPORATION
TIERRA SOLUTIONS INC., MAXUS ENERGY
CORPORATION, REPSOL, YPF, S.A., YPF, S.A.,
YPF HOLDINGS INC. and CLH HOLDINGS, INC.

Defendants

MAXUS ENERGY CORPORATION and TIERRA
SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY,
A.C.C., Inc.,
ACH FOOD COMPANIES, INC.,
ACTIVE OIL SERVICE,
ADCO CHEMICAL COMPANY,
AGC GEMICALS AMERICAS, INC.,
ALDEN-LEEDS, INC.,
ALLIANCE CHEMICAL, INC.,
ALUMAX MILL PRODUCTS, INC.,
AMCOL REALTY CO.,
AMERICAN INKS AND COATINGS

*SUPERIOR COURT OF NEW JERSEY
LAW DIVION: ESSEX COUNTY*

Docket No. L-9868-05 (PASR)

**ANSWER OF THIRD-PARTY
DEFENDANT GARFIELD
MOLDING CO. INC. TO THIRD-
PARTY COMPLAINT “B”**

CORPORATION,
APEXICAL, INC.,
APOLAN INTERNATIONAL, INC.,
ARKEMA, INC.,
ASHLAND INC.,
ASHLAND INTERNATIONAL HOLDINGS, INC.,
ASSOCIATED AUTO BODY & TRUCKS, INC.,
ATLAS REFINERY, INC.,
AUTOMATIC ELECTRO-PLATING CORP.,
AKZO NOBEL COATINGS, INC.,
BASF CATALYSTS LLC,
BASF CONSTRUCTION CHEMICALS INC.,
BASF CORPORATION,
BAYER CORPORATION,
BEAZER EAST, INC.,
BELLEVILLE INDUSTRIAL CENTER,
BENJAMIN MOORE & COMPANY,
BEROL CORPORATION,
B-LINE TRUCKING, INC.,
BORDEN & REMINGTON CORP.,
C.S. OSBORNE & CO.,
CAMPBELL FOUNDRY COMPANY,
CASCHEM, INC.,
CBS CORPORATION,
CELANESE LTD.,
CHEMICAL COMPOUNDS INC.,
CHEMTURA CORPORATION,
CLEAN EARTH OF NORTH JERSEY, INC.,
COSMOPOLITAN GRAPHICS CORPORATION.,
CIBA CORPORATION,
COLTEC INDUSTRIES INC.,
COLUMBIA TERMINALS, INC.,
COMO TEXTILE PRINTS, INC.,
CONAGRA PANAMA, INC.,
CONOPCO, INC.,
CONSOLIDATED RAIL CORPORATION,
COOK & DUNN PAINT CORPORATION,
COSAN CHEMICAL CORPORATION,
COVANTA ESSEX COMPANY,
CRODA, INC.,
CRUCIBLE MATERIALS CORPORATION,
CURTISS-WRIGHT CORPORATION,
CWC INDUSTRIES, INC.,
DARLING INTERNATIONAL, INC.,
DAVANNE REALTY CO.,
DELEET MERCHANDISING CORPORATION,

DELVAL INK AND COLOR, INCORPORATED,
DILORENZO PROPERTIES COMPANY, L.P.,
E.I. DU PONT DE NEMOURS AND COMPANY,
EASTMAN KODAK COMPANY
EDEN WOOD CORPORATION,
ELAN CHEMICAL COMPANY, INC.,
EM SERGEANT PULP & CHEMICAL CO.,
EMERALD HILTON DAVIS, LLC,
ESSEX CHEMICAL CORPORATION,
EXXON MOBIL,
F.E.R. PLATING, INC.,
FINE ORGANICS CORPORATION,
FISKE BROTHERS REFINING COMPANY,
FLEXON INDUSTRIES CORPORATION,
FLINT GROUP INCORPORATED,
FORT JAMES CORPORATION,
FOUNDRY STREET CORPORATION,
FRANKLIN-BURLINGTON PLASTICS, INC.,
GARFIELD MOLDING COMPANY, INC.,
GENERAL CABLE INDUSTRIES, INC.;
GENERAL DYNAMICS CORPORATION,
GENERAL ELECTRIC COMPANY
GENTEK HOLDING LLC,
GIVAUDAN FRAGRANCES CORPORATION,
G.J. CHEMICAL CO.,
GOODY PRODUCTS, INC.,
GORDON TERMINAL SERVICE CO. OF N.J.,
INC.,
HARRISON SUPPLY COMPANY
HARTZ MOUNTAIN CORPORATION
HAVENICK ASSOCIATES L.P.,
HEXCEL CORPORATION,
HEXION SPECIALTY CHEMICALS, INC.,
HOFFMANN-LA ROCHE INC.,
HONEYWELL INTERNATIONAL INC.,
HOUGHTON INTERNATIONAL INC.,
HUDSON TOOL & DIE COMPANY, INC.,
HY-GRADE ELECTROPLATING CO.,
ICI AMERICAS INC.,
INNOSPEC ACTIVE CHEMICALS LLC,
INX INTERNATIONAL INK CO.,
ISP CHEMICALS INC.,
ITT CORPORATION,
KEARNY SMELTING & REFINING CORP.,
KAO BRANDS COMPANY,
KOEHLER-BRIGITT STAR, INC.,

LINDE, INC.,
LUCENT TECHNOLOGIES, INC.,
MACE ADHESIVES & COATINGS COMPANY,
INC.,
MALLINCKRODT INC.,
MERK & CO., INC.,
METAL MANAGEMENT NORTHEAST, INC.,
MI HOLDINGS, INC.,
MILLER ENVIRONMENTAL GROUP, INC.,
MORTON INTERNATIONAL, INC.,
N L INDUSTRIES, INC.,
NAPPWOOD LAND CORPORATION,
NATIONAL FUEL OIL, INC.,
NATIONAL-STANDARD, LLC,
NELL-JOY INDUSTRIES, INC.,
NESTLE U.S.A., INC.,
NEW JERSEY TRANSIT CORPORATION,
NEWS AMERICA, INC.,
NEWS PUBLISHING AUSTRALIA LIMITED,
NORPAK CORPORATION,
NOVELIS CORPORATION,
ORANGE AND ROCKLAND UTILITIES, INC.,
OTIS ELEVATOR COMPANY,
PRC-DESOTO INTERNATIONAL, INC.,
PASSAIC PIONEERS PROPERTIES COMPANY,
PFIZER INC.,
PHARMACIA CORPORATION,
PHELPS DODGE INDUSTRIES, INC.,
PHILBRO, INC.,
PITT-CONSOL CHEMICAL COMPANY,
PIVOTAL UTILITY HOLDINGS, INC.,
PPG INDUSTRIES, INC.,
PRC-DESOTO INTERNATIONAL, INC.,
PRAXAIR, INC.,
PRECISION MANUFACTURING GROUP, LLC,
PRENTISS INCORPORATED,
PROCTER & GAMBLE MANUFACTURING
COMPANY,
PRYSMIAN COMMUNICATIONS CABLES AND
SYSTEMS USA LLC,
PSEG FOSSIL LLC,
PUBLIC SERVICE ELECTRIC AND GAS
COMPANY,
PURDUE PHARMA TECHNOLOGIES, INC.,
QUALA SYSTEMS, INC.,
QUALITY CARRIERS, INC.,

RECKITT BENCKISER, INC.,
REICHHOLD, INC.,
REVERE SMELTING & REFINING
CORPORATION,
REXAM BEVERAGE CAN COMPANY,
ROMAN ASPHALT CORPORATION,
ROYCE ASSOCIATES, A LIMITED
PARTNERSHIP,
R.T. VANDERBILT COMPANY, INC.,
RUTHERFORD CHEMICALS LLC
S&A REALTY ASSOCIATES, INC.,
SCHERING CORPORATION,
SEQUA CORPORATION,
SETON COMPANY,
SIEMENS WATER TECHNOLOGIES CORP.,
SINGER SEWING COMPANY
SPECTRASERV, INC.,
STWB, INC.,
SUN CHEMICAL CORPORATION,
SVP WORLDWIDE, LLC,
TATE & LYLE INGREDIENTS AMERICAS,
INC.,
TEVA PHARMACEUTICALS USA, INC.,
TEVAL CORP.,
TEXTRON INC.,
THE DIAL CORPORATION,
THE DUNDEE WATER POWER AND LAND
COMPANY,
THE NEWARK GROUP, INC.,
THE OKONITE COMPANY, INC.,
THE SHERWIN-WILLIAMS COMPANY,
THE STANLEY WORKS
THE VALSPAR CORPORATION,
THIRTY-THREE QUEEN REALTY INC.,
THREE COUNTY VOLKSWAGEN
CORPORATION,
TIDEWATER BALING CORP.,
TIFFANY & CO.,
TIMCO, INC.,
TRIMAX BUILDING PRODUCTS, INC.,
TROY CHEMICAL CORPORATION, INC.,
UNIVERSAL OIL PRODUCTS COMPANY,
V. OTTILIO & SONS, INC.,
VELSICOL CHEMICAL CORPORATION,
VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.,
VERTELLUS SPECIALTIES INC.,

VITUSA CORP.,
VULCAN MATERIALS COMPANY,
W.A.S. TERMINALS CORPORATION,
W.A.S. TERMINALS, INC.,
W.C. INDUSTRIES,
WHITTAKER CORPORATION,
WIGGINS PLASTICS, INC.,
ZENECA INC.,

Third-Party Defendants

Third Party Defendant Garfield Molding Co. Inc. (incorrectly identified as Garfield Molding Company, Inc.), by and through its counsel, and in accordance with this Court's Case Management Order V, Section 9, entered April 16, 2009 ("CMO V"), hereby answers the Third-Party Complaint "B" of defendants Maxus Energy Corporation and Tierra Solutions, Inc. ("Third-Party Plaintiffs") as follows. Garfield Molding Co. Inc. is hereinafter referred to as "Garfield" or "Garfield Molding" or "Third-Party Defendant".

GENERALLY

Garfield denies each and every allegation contained in the Third-Party Complaint "B" that is not otherwise herein addressed, including, without limitation, any allegations concerning the relief sought in the First Count and the Second Count and all headings and titles used in Third-Party Complaint "B".

AS TO PROCEDURAL BACKGROUND **(paragraphs 1 through 15)**

1-15. Garfield responds that the referenced pleadings speak for themselves. No response is required pursuant to CMO V.

AS TO THIRD-PARTY PLAINTIFFS **(paragraphs 16 through 18)**

16.-18. No response is required pursuant to Case Management Order V.

AS TO THIRD-PARTY DEFENDANTS
(paragraphs 19 through 93)

19.-93. The allegations of paragraphs 19 through 93 relate to parties other than Garfield and no response is required pursuant to Case Management Order V.

94. It is admitted only that Garfield Molding Co. Inc. is a corporation organized under the laws of the State of New Jersey with its principal of place of business at 10 Midland Avenue, Wallington, New Jersey. No entity named “Garfield Molding Company, Inc.” is a business at said location. The allegations are denied as to any entity with that name.

95.-209. The allegations of paragraphs 95 through 209 relate to parties other than Garfield and no response is required pursuant to Case Management Order V.

210. The allegations of paragraph 210 state a legal conclusion as to which no response is required.

DEFINITIONS
(paragraphs 211 through 236)

211.-236. No response is required pursuant to Case Management Order V.

AS TO FACTUAL ALLEGATIONS
(paragraphs 237 through 1310)

237.-1310. The allegations of paragraphs 237 through 1310 relate to other parties and no response is required pursuant to Case Management Order V.

Garfield Molding Site

1311. It is admitted only that Garfield Molding Co. Inc.(incorrectly identified as Garfield Molding Company, Inc.) operates a plant at the location 10 Midland Avenue, Wallington, New Jersey 07057 and that said location is bordered to the west by Midland Avenue,

to the south by residential properties and to the north and east by the Saddle River, a tributary of the Passaic River. The remaining allegations are denied.

1312. It is denied that Garfield Manufacturing Company, Inc. began operating at the Garfield Molding Site around 1917. It is admitted only that Garfield Molding Co. Inc., was incorporated in the State of New Jersey on or about December 26, 1978. Garfield is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1312 and, on this ground, denies such allegations.

1313. Admitted in part; denied in part. It is admitted that, since 1908, certain portions of the plant facilities located at 10 Midland Avenue have been used for the manufacture of certain molded products for use in the electrical industry. Garfield is without knowledge or information sufficient to form a belief as to the precise types of operations, materials used or activities undertaken historically during various times dating back as far as 1908 and, on this ground, the allegations as to same are denied. It is denied that the alleged molding operations, materials used and activities have in the past or do now include all the ones alleged in paragraph 1313. It is admitted that a part of 10 Midland Avenue (separate from the Garfield plant location) has been leased at times to entities whose business included car repair. Garfield is without knowledge or information to form a belief as to the truth of the allegation as to when any such lease first began. It is denied that such leasing was continuous and that any business was solely "auto repair." It is admitted that a portion of the property separate from the plant location was leased for a period to a direct advertising business, but it is denied that any such leasing exists at present. The remaining allegations of paragraph 1313 are denied.

1314. Garfield denies that any of the listed items are “manufacturing processes” which were “used or generated” at the Garfield plant or “site”. It is also denied that any are “waste materials” which were “used or generated” at Garfield, with the exception of “waste oils”.

1315. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1315, and, on this ground, denies such allegations.

1316. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1315, and, on this ground, denies such allegations.

1317. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1317 and, on this ground, denies all such allegations.

Garfield denies that there was any discharge of hazardous substances or hazardous wastes or “polluting” boiler blow-down.

1318. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to boiler blow-down during the time period stated and, on this ground, denies same. It is admitted only that PVSC wrote to Garfield on or about July 2, 1974 which document speaks for itself. Garfield denies that there was any violation or any discharge of hazardous substances or hazardous wastes and denies the remaining allegations of paragraph 1318.

1319. Garfield admits only that the plant has sinks used for washing and that on or about May 13, 1987 it was sent a writing asserting certain unspecified violations of a permit. The writing speaks for itself. Garfield denies that there was any particular room denominated as the “mixing room.” Garfield is without knowledge or information sufficient to form a belief is to the remaining allegations of paragraph 1319 and, on this ground, denies same. Garfield denies

that there was any discharge of hazardous substances or hazardous wastes from any wash sink or otherwise or that any violation occurred.

1320. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1320, and, on this ground, denies such allegations. Garfield denies that any non-contact cooling water contained hazardous substances or hazardous wastes. Non-contact cooling water was circulated water from the same source as the plant's drinking water and did not contain contaminants.

1321. Garfield admits only that it was sent a writing on or about April 29, 1988 asserting that it had committed a violation in connection with non-contact cooling water. The writing speaks for itself. Garfield is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1321 and, on this ground, denies all such allegations. It is denied that there was any discharge of hazardous substances or hazardous wastes or that any violation occurred. By way of further answer, non-contact cooling water was circulated water from the same source as the plant's drinking water and did not contain contaminants.

1322. Garfield admits only that it was sent a writing on or about July 27, 1988 asserting that it had committed certain violations. The writing speaks for itself. Garfield is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1322 and, on this ground, denies such allegations. It is denied that there was any discharge of hazardous substances or hazardous wastes or that any violation occurred.

1323. It is admitted only that stormwater from some locations at 10 Midland Avenue ran to the Saddle River during some rain events. Garfield denies that any stormwater from its plant or the property went to the Passaic River versus the Saddle River. Garfield denies that

stormwater contained hazardous substances or hazardous wastes or that there was any discharge of same. Garfield is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1323 (including, without limitation, as to the historical time periods or locations of stormwater flows as far back as 1908) and, on this ground, denies such allegations. By way of further answer, there has been a NJPDES permit for discharge of stormwater to the Saddle River since on or about 1974.

1324. Garfield denies the allegations of paragraph 1324.

1325. Garfield admits that a line containing sanitary wastewater from the 10 Midland Avenue plant was connected at some point in time to a line exiting the property which may have been connected to a public sewer. Garfield admits that non-contact cooling water and boiler blow-down also went to a sewer line beginning at some time or times. Garfield is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1325 (including, without limitation, as to when particular public sewer usages may have started, and whether or when sewer flows went to a municipal system or to the Bergen County Utilities Authority and its plant in Little Ferry) and, on this ground, denies such allegations.

1326. Garfield admits only that humidity room condensate has for a time gone to a sewer line. Garfield denies that such condensate contained hazardous substances or hazardous wastes. Garfield is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1326 (including, without limitation, as to the time period of sewer usage and whether or when sewers lead to the Bergen County Utilities Authority plant) and, on this ground, denies such allegations.

1327. Garfield is without knowledge or information sufficient to form a belief as to the allegations of paragraph 1327 and, on this ground, denies such allegations. Garfield denies that any hazardous substances or hazardous wastes were discharged.

1328. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1328 and, on this ground, denies same.

1329. Garfield admits only that NJDEP issued a Notice of Violation (“NOV”) on September 27, 1989, which speaks for itself. Garfield is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 1329 and, on this ground, denies same. Garfield denies that there was any violation or any “impact to waterways of the State of N.J.” or that any hazardous substances or hazardous wastes were discharged to same.

1330. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1330 and, on this ground, denies such allegations. By way of further answer, no date of any sampling is alleged.

1331. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1331 and, on this ground, the allegations are denied. By way of further answer, the allegations do not identify when or where the referenced substances are contended to have been “detected”.

1332. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1332 and, on this ground, the allegations are denied. By way of further answer, the allegations do not identify when or where “in the groundwater at the Garfield Molding Site” the referenced substances “were detected”. Garfield denies that

hazardous substances, if any, found in any groundwater originated from its plant or 10 Midland Avenue.

1333. Garfield is without knowledge or information sufficient to form a belief as to the allegations of sewer or other discharges of “process wastewater” and “surface water run-off” and, on this ground, denies all such allegations. By way of further answer, “process wastewater” is undefined and no time period or location of any of same or surface water is referenced. Garfield denies that any hazardous substances or hazardous wastes “from the Garfield Molding Site” or Garfield’s plant or 10 Midland Avenue were discharged directly or otherwise to the Saddle River or Passaic River. Garfield is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1333 relating to the PVSC system and, on this ground, denies all such allegations. By way of further answer, Tierra and Maxus separately allege (in paragraphs 1325 and 1326) discharges to sewers leading to the treatment plant of the Bergen County Utilities Authority, not part of the PVSC system.

1334. Garfield denies the allegations of paragraph 1334.

1335. Garfield admits only that, on or about February 14, 2006, EPA sent a letter to Garfield. The letter, being a document, speaks for itself. Garfield denies that it or the plant or property located at 10 Midland Avenue released any hazardous substances into the Lower Passaic River Study Area or that it is liable for “Response costs”.

1336. Garfield denies the allegations of paragraph 1336.

1337.-3445. The allegations of paragraphs 1337 through 3445 relate to other parties and no response is required under Case Management Order V.

AS TO FIRST COUNT

(New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 .f.a.2(a))

3446. Garfield repeats and incorporates herein its responses to paragraphs 1 through 3445.

3447. The allegations of paragraph 3347 constitute legal conclusions to which no response is required. In addition, under Case Management Order V, no response is required to them to the extent they relate to other Third-Party Defendants and Garfield is also without knowledge or information to form a belief as to the truth of said allegations. To the extent the allegations of paragraph 3447 relate to Garfield (or predecessor entities), they are denied.

3448. The allegations of paragraph 3348 constitute legal conclusions to which no response is required. To the extent a response is required, the allegations are denied by Garfield. Tierra and Maxus are not entitled to contribution or any other relief from Garfield under the Statute cited or otherwise.

3449. The allegations of paragraph 3449 constitute legal conclusions to which no response is required. No answer is required under Case Management Order V as to any other Third-Party Defendant. To the extent a response is required, the allegations of paragraph 3449 are denied as to Garfield.

3450. The allegations of paragraph 3450 contain legal conclusions to which no response is required. To the extent a response is required, Garfield is without knowledge or information sufficient to form a belief as to the allegations of paragraph 3450 and, on this ground, said allegations are denied.

3451. No answer is required under Case Management Order V as to any other Third-Party Defendant. The allegations of paragraph 3451 are denied as to Garfield. Garfield denies it is liable to Third-Party Plaintiffs for contribution.

AS TO SECOND COUNT

(Statutory Contribution)

3452. Garfield repeats and incorporates herein its responses to paragraphs 1 through 3451.

3453. The allegations of paragraph 3453 constitute legal conclusions to which no response is required. In addition, under Case Management Order V, no response is required to them to the extent they relate to other Third-Party Defendants. To the extent the allegations relate to Garfield, they are denied. Garfield denies that it is liable to Third-Party Plaintiffs for contribution.

FIRST AFFIRMATIVE DEFENSE

1. The Third-Party Complaint is barred in whole or in part as it fails to state a cause of action against Third-Party Defendant upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

2. Third-Party Defendant is not a discharger or a person in any way responsible for a discharge under N.J.S.A. 58:10-23, et seq. ("Spill Act").

THIRD AFFIRMATIVE DEFENSE

3. The claims of Third-Party Plaintiffs are barred in whole or in part by the statutory defenses to liability provided by the Spill Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1, et seq. ("WPCA")

FOURTH AFFIRMATIVE DEFENSE

4. Third-Party Plaintiffs have no Spill Act claim against Third-Party Defendant because they have not cleaned up and/or removed a discharge of hazardous substances within the meaning of the Spill Act.

FIFTH AFFIRMATIVE DEFENSE

5. Third-Party Plaintiffs have no right of contribution against Third-Party Defendant under the WPCA.

SIXTH AFFIRMATIVE DEFENSE

6. Third-Party Plaintiffs' claims are barred, in whole or in part, by the entire controversy doctrine.

SEVENTH AFFIRMATIVE DEFENSE

7. To the extent the Third-Party Complaint purports to seek any relief under New Jersey's Environmental Rights Act, N.J.S.A. 2A:35A-1, et seq., in whole or in part, the pleading is barred because Third-Party Plaintiffs have failed to meet the procedural and/or substantive requirements entitling them to sue Third-Party Defendant under that statute.

EIGHTH AFFIRMATIVE DEFENSE

8. Some or all Third-Party Plaintiffs do not have standing to sue.

NINTH AFFIRMATIVE DEFENSE

9. Upon information and belief, Third-Party Plaintiffs are mere corporate shells who are periodically infused with cash or equivalent contributions by other corporate entities which money Third-Party Plaintiffs purport to use to address the environmental contamination at issue in this litigation. Consequently, the claims by Third-Party Plaintiffs are barred under the collateral source doctrine or its equitable equivalent.

TENTH AFFIRMATIVE DEFENSE

10. Third-Party Plaintiffs are not the real parties in interest for pursuit of the claims

set forth in the Third-Party Complaint, nor are Third-Party Plaintiffs acting in the capacity of an executor, administrator, guardian of a person or property, trustee of an express trust, or a party with whom or in whose name a contract has been made for the benefit of another. Consequently, all claims are barred under R. 4:26-1 of the New Jersey Court Rules.

ELEVENTH AFFIRMATIVE DEFENSE

11. Third-Party Plaintiffs are mere volunteers for remediation of the environmental contamination for which they claim contribution and/or other relief from Third-Party Defendant. Consequently, the claims in the Third-Party Complaint are barred, in whole or in part.

TWELFTH AFFIRMATIVE DEFENSE

12. The claims brought by Third-Party Plaintiffs reflect damages that are wholly speculative, conjectural, unreasonable, excessive and/or arbitrary and capricious.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Third-Party Defendant cannot be held liable for or be required to pay Third-Party Plaintiffs' damages or other claims based on actions or inactions by Third-Party Defendant that arise out of conduct lawfully undertaken in compliance with permits or other approvals issued by relevant government agencies, including the State of New Jersey and/or the United States and/or in compliance with applicable laws, regulations, rules, orders, ordinances, directives and common law, and other requirements of all foreign, federal, state and local government entities ("applicable Environmental Laws").

FOURTEENTH AFFIRMATIVE DEFENSE

14. At common law, Third-Party Defendant held, and still holds, a usufructuary interest allowing it, along with all other citizens, the reasonable use of assets held for the benefit of the public by the State of New Jersey under the Public Trust Doctrine. Third-Party Defendant has at all relevant times acted in accordance with its rights of reasonable use of publicly held assets. As a matter of law, Third-Party Plaintiffs' claims are derivative of, and

cannot be any greater than, the claims that the State of New Jersey has or would have against Third-Party Defendant directly. As a result, the claims set forth in the Third-Party Complaint are barred, in whole or in part.

FIFTEENTH AFFIRMATIVE DEFENSE

15. The State of New Jersey is legally barred from asserting direct claims against Third-Party Defendant for the damages sought in its Amended Complaint. Consequently, all claims that are or may be derivative of the State of New Jersey's claims are barred as to the Third-Party Defendant as well, including the claims set forth in the Third-Party Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

16. The Third-Party Complaint is barred and/or is constitutionally impermissible to the extent that it seeks to impose retroactive liability for acts that were previously authorized or condoned by law including applicable Environmental Laws.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. Third-Party Plaintiffs' Complaint is barred to the extent that it seeks relief for damages incurred prior to the effective date of the Spill Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. At all relevant times, Third-Party Defendant complied with all applicable Environmental Laws, regulations, industry standards and ordinances, and otherwise conducted itself reasonably, prudently, in good faith, and with due care for the rights, safety and property of others.

NINETEENTH AFFIRMATIVE DEFENSE

19. The claims asserted against Third-Party Defendant in the Third-Party Complaint are barred because at all relevant times Third-Party Defendant exercised due care with respect to hazardous substances, if any, that may have been handled at the subject property or properties, took precautions against foreseeable acts or omissions of others and the

consequences that could reasonably result from such acts or omissions, and because any release or threat of release of any hazardous substances, if any, and any costs or damages resulting therefrom, were caused solely by the negligence, acts or omissions of third parties over whom Third-Party Defendant had no control, whether by, in whole or part, contract or otherwise, or any duty to control, including without limitation the State of New Jersey and its agencies and officials, and the United States and its agencies and officials.

TWENTIETH AFFIRMATIVE DEFENSE

20. The claims set forth in the Third-Party Complaint are barred in whole or in part by the doctrine of preemption.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21. Third-Party Plaintiffs suffered no losses or injuries that were proximately caused by Third-Party Defendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

22. Third-Party Plaintiffs' claims against Third-Party Defendant are barred, in whole or in part, by the applicable Statute of Limitations, Statute of Repose, and/or the equitable doctrines of laches and estoppel.

TWENTY-THIRD AFFIRMATIVE DEFENSE

23. Third-Party Plaintiffs' claims are barred in whole or in part by the doctrines of accord and satisfaction, waiver, consent, estoppel, release and/or assumption of risk.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

24. Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrine of "coming to the nuisance."

TWENTY-FIFTH AFFIRMATIVE DEFENSE

25. Third-Party Plaintiffs' claims are barred, in whole or in part, by the "unclean hands" doctrine.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

26. The claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because: (1) equity will not compel action that is impossible of performance; (2) equity will not exceed the rights of parties existing at law; (3) equity will not consciously become an instrument of injustice; and/or (4) equity will not permit double satisfaction.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27. Third-Party Plaintiffs' claims are barred, in whole or in part, by the doctrines of collateral estoppel, *res judicata*, and/or judicial estoppel including in connection with prior findings as to Third-Party Plaintiffs' intentional misconduct.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

28. Third-Party Plaintiffs' claims are barred because the relief sought against Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to unlawful taxation.

TWENTY-NINTH AFFIRMATIVE DEFENSE

29. Third-Party Plaintiffs' claims against Third-Party Defendant are subject to set-off and recoupment and therefore must be reduced accordingly.

THIRTIETH AFFIRMATIVE DEFENSE

30. Third-Party Defendant did not own or operate a "Major Facility" as defined by the Spill Act or the WPCA.

THIRTY-FIRST AFFIRMATIVE DEFENSE

31. Third-Party Plaintiffs' claims are barred, in whole or in part, by Third-Party Plaintiffs' failure to comply with the prerequisites to liability under the Spill Act including, without limitation to, Third-Party Plaintiffs' have not incurred costs authorized by the Spill Act and Third-Party Plaintiffs' have failed to direct cleanup and removal activities in accordance with the National Contingency Plan to the greatest extent possible.

THIRTY-SECOND AFFIRMATIVE DEFENSE

32. Third-Party Plaintiffs' claims are barred because neither they nor Plaintiffs have incurred "costs of restoration and replacement...of any natural resources damaged or destroyed by a discharge" under the Spill Act.

THIRTY-THIRD AFFIRMATIVE DEFENSE

33. Third-Party Plaintiffs have failed to join necessary and indispensable parties needed for a just adjudication of the claims asserted in this action, in whose absence complete relief can not be afforded the existing parties pursuant to R. 4:25-1 of the New Jersey Court Rules. These necessary and indispensable parties include, without limitation, State of New Jersey agencies and instrumentalities, including without limitation the State trustees for tidelands, certain state and local governmental agencies located outside the boundaries of New Jersey, including the State of New York and its agencies and instrumentalities, all of whom are or may be separately liable for contamination allegedly located in the "Newark Bay Complex," as defined in Plaintiffs' Second Amended Complaint.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

34. Third-Party Plaintiffs' claims are not ripe for adjudication, inter alia, because Third-Party Plaintiffs have a joint liability to the Plaintiffs and have not paid and will not pay more than their fair or equitable share of the liability.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

35. Third-Party Defendant denies that Third-Party Plaintiffs have suffered any harm whatsoever, but in the event that they did suffer any form of injury or damage cognizable under applicable Environmental Laws, such injury was caused by the intervening acts, omissions, or superseding acts of persons or entities over whom Third-Party Defendant exercised no control and for whose conduct Third-Party Defendant was not responsible including, without limitation, unpermitted and storm event discharges from publically owned treatment works.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

36. If Third-Party Plaintiffs sustained any injury or are entitled to any damages, such injury and damages were wholly, or in part, caused by Third-Party Plaintiffs' own acts or omissions, negligence, lack of due care and fault and/or that of Third-Party Plaintiffs' agents or employees. In the event that Third-Party Plaintiffs are found to have sustained any injury and are entitled to damages, Third-Party Plaintiffs' recovery against Third-Party Defendant, if any, must be reduced by the proportionate damages caused by the acts and conduct of Third-Party Plaintiffs and/or its agents or employees.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

37. Although Third-Party Defendant denies that it is liable for the contamination described in Third-Party Plaintiffs' Complaint, in the event it is found liable, Third-Party Defendant is entitled to an offset against any such liability on its part for the equitable share of the liability of any person or entity not joined as a defendant in this action that would be liable to Third-Party Plaintiffs.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

38. Under N.J.S.A. 2A:15-97, the amount of damages, if any, should be reduced by any amounts recovered from any other source.

THIRTY-NINTH AFFIRMATIVE DEFENSE

39. Third-Party Plaintiffs' claims are barred to the extent that the conduct of Third-Party Defendants alleged to give rise to liability in the Third-Party Complaint is the subject of a release, covenant not to sue, or has otherwise been excused by Plaintiffs, including, without limitation, through issuance of a no further action letter, consent order, settlement agreement or other applicable document, with or without inclusion of contribution protection, or through the Plaintiffs' allowance of any applicable Statute of Limitations or Statute of Repose to lapse.

FORTIETH AFFIRMATIVE DEFENSE

40. The disposal of waste, if any, which allegedly originated from Third-Party Defendant, was undertaken in accordance with the then state of the art, the then accepted industrial practice and technology, and the then prevailing legal requirements for which Third-Party Defendant cannot be found retroactively liable.

FORTY-FIRST AFFIRMATIVE DEFENSE

41. Any discharge that allegedly originated from Third-Party Defendant, was investigated and remediated by a licensed professional and under the direct oversight of state and/or federal agencies with the then state of the art, the then accepted industrial practice and technology, and the then prevailing requirements for which Third-Party Defendant cannot be found retroactively liable.

FORTY-SECOND AFFIRMATIVE DEFENSE

42. Third-Party Plaintiffs are not entitled to recover costs incurred for cleanup actions not undertaken in coordination or conjunction with federal agencies.

FORTY-THIRD AFFIRMATIVE DEFENSE

43. The damages or other relief that Third-Party Plaintiffs seek, if awarded, would result in unjust enrichment to the Third-Party Plaintiffs.

FORTY-FOURTH AFFIRMATIVE DEFENSE

44. Third-Party Plaintiffs' claims are barred due to its own conduct in unilaterally, and without notice to Third-Party Defendant, implementing clean-up plan(s) or taking other actions that resulted in the commingling of formerly divisible areas of environmental harm.

FORTY-FIFTH AFFIRMATIVE DEFENSE

45. Third-Party Defendants' liability to Third-Party Plaintiffs, if any, is limited to Spill Act and contribution claims and excludes any such claims which may properly be

apportioned to parties pursuant to *Burlington Northern and Santa Fe Railway Co., et al. v. United States, et al.*, 556 U.S. ____; 129 S.Ct. 1870 (2009), and other comparable decisional law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

46. Third-Party Plaintiffs cannot assert contribution claims against Third-Party Defendants because the discharges for which the Plaintiffs are seeking relief are different from Third-Party Defendants' alleged discharges.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

47. Third-Party Plaintiffs cannot seek contribution under the Joint Tortfeasors Contribution Law because Third-Party Defendant(s) are not liable for "the same injury" caused by Third-Party Plaintiffs' discharges and do not share a common liability to the State of New Jersey.

FORTY-EIGHTH AFFIRMATIVE DEFENSE

48. Third-Party Plaintiffs' claims are barred to the extent they seek to hold Third-Party Defendant liable, in contribution, for any claims for which it would be a violation of public policy to hold Third-Party Defendant liable, including but not limited to punitive damages and penalties.

FORTY-NINTH AFFIRMATIVE DEFENSE

49. Third-Party Plaintiffs claims are barred, in whole or in part, because no actions or inactions by Third-Party Defendant have resulted in any permanent impairment or damage to a natural resource.

FIFTIETH AFFIRMATIVE DEFENSE

50. Third-Party Plaintiffs claims for contribution, whether under the Spill Act or the New Jersey statutory provisions for contribution, are derivative of, and are

therefore no greater than, Plaintiffs' claims against Third-Party Plaintiffs. Consequently, Third-Party Plaintiffs' claims against Third-Party Defendant are barred to the extent of any legal extinguishments of actual or potential claims by the Plaintiffs against Third-Party Defendant pertaining to the alleged environmental contamination (including Natural Resource Damage) of any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant. Examples of legal extinguishments that are or may be applicable to Third-Party Defendant include, with respect to each such Site:

- A. Any release or covenant not to sue granted by Plaintiffs to Third-Party Defendant;
- B. Any Settlement or other compromise between Plaintiffs and Third-Party Defendant;
- C. Any expiration of the statute of limitations or statute of repose governing Plaintiffs' right to maintain a claim against Third-Party Defendant;
- D. Any failure to join a claim relating to the "Newark Bay Complex" (as Defined in the Third-Party Complaint) in a prior litigation between Plaintiffs and Third-Party Defendant, which would result in relinquishment of such a claim by virtue of New Jersey's Entire Controversy Doctrine; and/or
- E. Any issuance by Plaintiffs to Third-Party Defendant, directly or indirectly, of any "No Further Action" (a/k/a "NFA") determination, "Negative Declaration," or similar determination.

FIFTY-FIRST AFFIRMATIVE DEFENSE

51. Third-Party Plaintiffs' claims are barred because the relief sought against Third-Party Defendant, were it claimed directly by Plaintiffs, would amount to a "taking" of Third-Party Defendant's property in violation of its constitutional rights to due process and/or in violation of its rights under the Eminent Domain Act of 1971, N.J.S.A. 20:3-1, *et seq.*

FIFTY-SECOND AFFIRMATIVE DEFENSE

52. Third-Party Plaintiffs' claims are barred to the extent the relief sought by

Third-Party Plaintiffs in the Complaint is at odds with Third-Party Defendant's responsibilities to conduct ongoing environmental cleanups under oversight of the Plaintiffs at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant, thereby exposing Third-Party Defendant to inconsistent responsibilities, penalties and liabilities, and the possibility of paying twice for the same actions (i.e., double recovery).

FIFTY-THIRD AFFIRMATIVE DEFENSE

53. To the extent Third-Party Defendant is acting or has acted to conduct environmental cleanup at any site(s) alleged by Third-Party Plaintiffs to be the subject of their contribution claims against Third-Party Defendant, the claims for equitable contribution under the Spill Act in the Third-Party Complaint are barred because equity will not compel action that is already being undertaken and/or is unnecessary.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

54. Without admitting liability, Third-Party Defendant alleges that if it is found to have been engaged in any of the activities alleged in the Third-Party Complaint, such activities were *de minimis* and not the cause of any damages or other claims by Third-Party Defendant.

FIFTY-FIFTH AFFIRMATIVE DEFENSE

55. Third-Party Defendant incorporates by reference any affirmative defense asserted by other parties in this action to the extent such affirmative defenses are defenses to Third-Party Plaintiffs' claims and do not impose liability on Third-Party Defendant.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

56. Third-Party Defendant reserves the right to assert and hereby invoke each and every Environmental Law defenses that may be available during the course of this action.

WHEREFORE, Third-Party Defendant Garfield Molding Co. Inc. (incorrectly identified as Garfield Molding Company, Inc.) demands judgment in its favor and against Third-Party Plaintiffs Maxus Energy Corporation and Tierra Solutions, Inc. and that their Third-Party Complaint "B" be dismissed in its entirety with prejudice, together with costs, attorneys fees and such other relief as the Court deems just and proper.

COUNTER-CLAIMS, CROSS CLAIMS AND THIRD/FOURTH PARTY CLAIMS

No such claims are required to be asserted at this time and are expressly reserved pursuant to CMO V.

DESIGNATION OF TRIAL COUNSEL

Stuart M. Goldstein and Stephen W. Miller are designated to try this case for Garfield Molding.

CERTIFICATION PURSUANT TO R. 4:5-1 (b) (2)

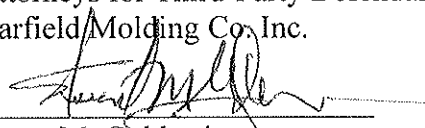
Pursuant to R. 4:5-1 (b) (2), the undersigned hereby certifies that:

- (a) The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no action or arbitration proceeding is contemplated by the undersigned; and
- (b) Since it is the legal position of the undersigned that the potential liability, if any, of a third party defendant for the claims set forth in the Third Party Complaint is several, only, there are no non-parties which should be

joined in the action pursuant to R. 4:28; but that

- (c) In the event the Court shall determine that the potential liability of a third party defendant, if any, for the claims set forth in the Third Party Complaint is in any respect joint and several (which is denied), then all or some of the non-parties listed on the letter dated October 7, 2009 from Eric Rothenberg, Esq. of O'Melveny and Myers LLP to the Honorable Maria Corodemus, Special Master, and posted to the approved case web-site in this matter on October 20, 2009 may constitute non-parties who should be joined in the action pursuant to R. 4:28; and
- (d) In either event, some or all of such non-parties are subject to joinder pursuant to R.4:29-1 (b) because of potential liability to any party on the basis of the same transactional facts.

HOLLSTEIN KEATING CATTELL
JOHNSON & GOLDSTEIN P.C.
Attorneys for Third-Party Defendant
Garfield Molding Co. Inc.



Stuart M. Goldstein

Dated: March 15, 2010

HOLLSTEIN KEATING CATTELL JOHNSON & GOLDSTEIN P.C.

BY: **Stuart M. Goldstein**

WILLOW RIDGE EXECUTIVE OFFICE PARK

750 ROUTE 73 SOUTH – SUITE 301

MARLTON, NJ 08053

(856) 810-8860

ATTORNEY FOR **Third Party Defendant, Garfield Molding Co. Inc.**

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION, THE
COMMISSIONER OF THE NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION, and THE ADMINISTRATOR
OF THE NEW JERSEY SPILL
COMPENSATION FUND,

Plaintiffs

v.

OCCIDENTAL CHEMICAL
CORPORATION, TIERRA SOLUTIONS,
INC., MAXUS ENERGY CORPORATION,
REPSOL, YPF, S.A., YPF S.A., YPF
HOLDINGS, INC. and CLH HOLDINGS,
INC.

Defendants

MAXUS ENERGY CORPORATION and
TIERRA SOLUTIONS, INC.,

Third-Party Plaintiffs,

v.

3M COMPANY, et al.,

Third-Party Defendants

*SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY*

Docket No. L-9868-05 (PASR)

**CERTIFICATE OF SERVICE OF
ANSWER OF THIRD-PARTY
DEFENDANT GARFIELD
MOLDING CO. INC. TO THIRD-
PARTY COMPLAINT “B”**

I, Stuart M. Goldstein, hereby certify that the ANSWER OF THIRD-PARTY
DEFENDANT GARFIELD MOLDING CO. INC. TO THIRD-PARTY COMPLAINT “B” was
served electronically on all parties which have consented to service by posting on
www.sfile.com/njdepvocc on March 15, 2010. The following counsel of record were served on
March 15, 2010, via first class, regular mail:

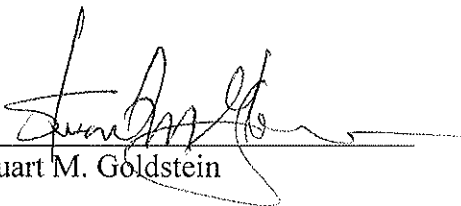
Richard J. Dewland, Esq.
Borough of Hasbrouck Heights
Coffey & Associates
465 South Street
Morristown, NJ 07960

John P. McGovern, Esq.
City of Orange Township
29 North Day Street
Orange, NJ 07050

John A. Daniels, Esq.
Daniels & Daniels LLC
Passaic Pioneers Properties Company
6812 Park Avenue
Guttenberg, NJ 07093

Gustavo Garcia, Esq.
Municipal Attorney
Township of Irvington
Irvington Municipal Building
Civic Square
Irvington, NJ 07111

Christine M. Burgess, Esq.
Township Attorney
Hillside Township
Municipal Bldg.
1409 Libert Avenue
Hillside, NJ 07205



Stuart M. Goldstein

Date: March 15, 2010